

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:22-cv-02216-PAB-SKC

JOSEPH HOLDINGS, LLC, d/b/a CLEARER TECHNOLOGY,
GABRIEL S JOSEPH, III,

Plaintiffs / Counterclaim Defendants,

v.

BANK OF AMERICA CORPORATION,

Defendant / Counterclaimant.

**PLAINTIFFS' RESPONSE OPPOSING DEFENDANT'S MOTION FOR LEAVE TO
SUBMIT SUPPLEMENTAL EVIDENCE**

Plaintiffs Joseph Holdings, LLC, and Gabriel S. Joseph, III, oppose Defendant Bank of America's Motion for Leave to File Supplemental Evidence in support of its opposition to Plaintiffs' Motion for Summary Judgment or Judgment on the Pleadings. Defendant proposes to file a fundraising contract between the third-party non-profit 1792 Exchange, Inc. and Plaintiff Gabriel S. Joseph, III, signed in August 2022 and claims that it is responsive to various discovery requests. The document is not responsive because it is not relevant. Under Fed. R. Civ. P. 56, "[t]he court may consider only admissible evidence when ruling on a summary judgment motion." *Newland v. Stevinson Toyota E., Inc.*, 505 F. Supp. 2d 689, 696 (D. Colo. 2007). All evidence must be relevant to be admissible. See. Fed. R. Evid. 402.

Evidence is relevant if:

- (a) It has any tendency to make a fact more or less probably than it would be without the evidence; and
- (b) The fact is of consequence in determining the action.

Fed. R. Evid. 401.

Mr. Joseph's personal contract with 1792 Exchange for fundraising activities and is not relevant to any claim brought by Plaintiffs or any counterclaim brought by Defendant. The contract speaks for itself. Mr. Joseph's compensation is based on donors he introduces to 1792 Exchange make contributions. See Dkt. 38, Exhibit 1. The BofA domain names and website to which they resolve have no donation option and do not reference or refer any person to 1792 Exchange. Furthermore, Defendant's request for production 16 asked for "[c]opies of all Communications between Plaintiffs and/or any other parties that have been made through the Websites or through websites at the domain name BIGBANKEMPLOYEES.COM." Plaintiffs responded that "they do not have documents responsive to this request." Dkt. 32-2. Further, Mr. Joseph has sworn that he has "made no money from these domains or the bigbanksemployee.com website." Dkt. 23-2, ¶ 9. Defendant's speculations that non-existent communication from non-existent contacts led to Mr. Joseph profiting from registering the domain names approximately two months before the fundraising contract is fallacious and illogical.

Defendant's baseless speculation cannot make the contract relevant to the claims regarding the domain names in dispute in this case. Evidence that is not relevant is not admissible when ruling on a motion for summary judgment. Plaintiffs note that Defendant also seeks to use this irrelevant evidence in its reply to its motion under Rule 56(d) after Plaintiffs filed their response. This is procedurally unfair to Plaintiffs. Therefore, Plaintiffs respectfully

request the Court to deny Defendant's Motion for Leave to File Supplemental Evidence in support of its opposition to Plaintiffs' Motion for Summary Judgment or Judgment on the Pleadings as well as to use such evidence in its reply to its Rule 56(d) motion.

Respectfully submitted this 28th day of June 2023.

Envisage Law

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2023, I filed this document with the Clerk of the Court for the United States District Court for the District of Colorado using the CM/ECF system, which will serve this document on all counsel of record.

By: /s/ Allison Joelle Harvill
Allison Joelle Harvill